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| TRANSMITTAL OF APPEAL BRIEF (Large Entity) | Docket No. YOR920010330US1 |
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In Re Application Of:
**Appleby, et al.**

| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|---|---|---|---|---|---|
| 09/916,513 | July 30, 2001 | Huynh, Kim T. | 48150 | 2112 | 9755 |

Invention:
**METHOD, SYSTEM, AND PROGRAM PRODUCTS FOR DISTRIBUTED CONTENT THROTTLING IN A COMPUTING ENVIRONMENT**

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

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Dated: **November 2, 2004**

**Frederick E. Cooperrider**
**Registration No. 36,769**
**Customer No. 48150**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Appleby, et al.

**Serial No.: 09/916,513** Group Art Unit: 2121

Filed: July 30, 2001 Examiner: Huynh, Kim T.

For: **METHOD, SYSTEM, AND PROGRAM PRODUCTS FOR DISTRIBUTED CONTENT THROTTLING IN A COMPUTING ENVIRONMENT**

Commissioner of Patents
Alexanderia, VA 22313-1450

## APPELLANTS' BRIEF ON APPEAL

Sir:

Appellants respectfully appeal the rejection of claims 1-21 and 24-33 in the Office Action dated June 3, 2004. A Notice of Appeal was timely filed on September 3, 2004.

## I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corporation, assignee of 100% interest of the above-referenced patent application.

## II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

## III. STATUS OF CLAIMS

Claims 1-21 and 24-33, all of the claims presently pending in the application, stand rejected on prior art grounds.

Claims 1, 3-8, 10-14, 16, 18-21, 24, and 26-31 stand rejected under 35 USC §102(e) as anticipated by US Patent Publication US20020091825 to Shuster. Claims 2, 9, 15, 17, and 25 stand rejected under 35 USC §103(a) as unpatentable over Shuster, further in view of US Patent 6,598,071 to Hayashi et al. Claims 32 and 33 stand rejected under 35 USC §103(a) as unpatentable over Shuster, further in view of Applicants' Admitted Prior Art.

All claims are being appealed.

## IV. STATUS OF AMENDMENTS

An Amendment Under 37 CFR §1.116 was filed on August 3, 2004. In the Advisory Action dated September 2, 2004, the Examiner indicated that the arguments in the Amendment Under 37 CFR §1.116 were not persuasive and that the rejection based Schuster was maintained but that the Amendment would be entered into the record upon filing this Appeal Brief. The claims in the Appendix reflect the version of the claims of the Amendment Under 37 CFR §1.116 as filed on August 3, 2004.

Moreover, Appellants concurrently file under separate cover a second Amendment Under 37 CFR §1.116, along which is submitted a Declaration Under 37 CFR §1.131 that the present invention was completed in the U.S. prior to August 17, 2000, thereby eliminating Schuster as a prior art reference. It is believed that all claims are, therefore, allowable, based on the prior art currently of record.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellants' invention, as disclosed and claimed in independent claim 1, is directed to a method in a computer network of controlling an admittance of requests to at least one processing component. The amount of network traffic is evaluated to determine if the amount exceeds a preset threshold. (Lines 5-9 of page 12)

If the preset threshold is exceeded, the content of each request is differentiated in to types and the request is admitted only if the differentiated type meets at least one criterion for admission. (Line 17 of page 12 through line 13 of page 13)

The conventional method discussed on pages 1-4 of the specification makes no differentiation of requests based upon a content of the request. Moreover, the current content throttler presented as prior art does not first evaluate network traffic to determine whether the content-based throttling should be invoked.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant presents the following issue for review by the Board of Patent Appeals and Interferences:

ISSUE 1: THE ANTICIPATION REJECTION BASED ON US PATENT PUBLICATION US20020091825 TO SHUSTER

Whether the rejection under 35 U.S.C. § 102(e) can be maintained, in view of the concurrently-filed Declaration Under 37 C.F.R. § 1.131.

## VII. ARGUMENTS

**ISSUE #1: The Anticipation Rejections based on Shuster**

Appellants believe that the Shuster reference is patentably distinguishable from the present invention. The Examiner does not agree. Rather than belabor the point, Appellants have concurrently filed a Declaration Under 37 C.F.R. § 1.131 to eliminate this reference.

Therefore, Appellants believe that the rejection based on Shuster has been rendered moot.

## IX. CONCLUSION

In view of the foregoing, Appellants submit that claims 1-21 and 24-33, all the claims presently pending in the application, are clearly enabled and patentably distinct from the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to remove all rejections of claims 1-21 and 24-33.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 50-0510.

Respectfully submitted,

Dated: 11/2/04

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## APPENDIX

**Claims, as reflected upon entry of the Amendment Under 37 CFR §1.116 filed on August 3, 2004:**

1. (Previously presented) A method in a computer network of controlling an admittance of requests to at least one processing component, said method comprising:

evaluating an amount of traffic in said network;

determining whether said amount exceeds a preset threshold;

if said amount exceeds said threshold, differentiating a type of said requests based on a content in each said request; and

admitting said each request only if said differentiated type meets at least one criterion for admission.

2. (Original claim) The method of claim 1, further comprising:

returning a message to a sender of each said request not admitted.

3. (Original claim) The method of claim 1, further comprising:

evaluating at least one criterion in said computer network; and

performing said differentiation based on said evaluation.

4. (Original claim) The method of claim 1, wherein said method is embodied in a software program, wherein said admittance to said at least one processing component is gained through one or more entry points, said method further comprising:

activating said software program in at least one of said one or more entry points.

5. (Original claim) The method of claim 4, wherein said at least one processing component comprises a plurality of processing components, said at least one or more entry points comprises a plurality of web servers, and said activation of said software program occurs in each web server in said plurality of web servers, thereby providing an admittance method that is distributed.

6. (Original claim) The method of claim 4, wherein said software program comprises a plugin software module.

7. (Original claim) The method of claim 3, wherein said at least one evaluation criterion comprises a measurement of activity on said network.

8. (Original claim) The method of claim 7, wherein said measurement of activity comprises a measurement of requests to said at least one processing component.

9. (Currently amended) The method of claim 1, wherein said at least one criterion for admission comprises evaluation of a response time for said request.

10. (Original claim) The method of claim 1, further comprising:

prioritizing said requests within a same type, based on further refinement of said content.

11. (Original claim) The method of claim 1, wherein said computer network comprises a distributed heterogeneous computing environment having a dependency of said processing components represented.

12. (Original claim) The method of claim 11, further comprising:

determining a load imposed on a dependee processing component.

13. (Original claim) The method of claim 12, wherein said load determination is performed in a central location.

14. (Original claim) The method of claim 12, wherein said at least one criterion for admission comprises said determined load on said dependee component.

15. (Original claim) The method of claim 1, further comprising:

associating a user defined response with selected ones of said requests that are not admitted.

16. (Original claim) The method of claim 11, wherein said admission control is applied at a tier to control admittance to a next processing component along a request flow path.

17. (Original claim) A method of claim 11, where said at least one criterion for admission comprises a determination that a dependee processing component is not currently available.

18. (Original claim) The method of claim 1, further comprising:

determining a load of a target processing component; and

altering a normal response to a request based on said load determination.

19. (Original claim) The method of claim 1, wherein said admitting of said each request is distributed.

20. (Previously presented) A method of controlling the admittance of requests to at least one processing component in a distributed heterogeneous computing environment, each said request comprising a direction component and a message component, said method comprising:

receiving a request;

measuring an amount of activity on said computing environment;

determining whether said activity amount exceeds a threshold amount;

if said threshold amount is exceeded, evaluating at least a part of said message component of said received request; and

providing an admission of said received request based on said evaluation.

21. (Original claim) The method of claim 20, wherein said environment comprises a network and said direction component comprises a location information relative to said network.

22-23. (Canceled)

24. (Original claim) The method of claim 20, wherein said admission evaluation is distributed at multiple points in said distributed heterogeneous computing environment.

25. (Original claim) The method of claim 20, wherein said evaluation of at least a part of said message component comprises an evaluation of a response time for said request.

26. (Previously presented) A request throttler in a computer network that controls an admittance of requests to at least one processing component, said request throttler comprising:

a threshold detector to determine whether an activity on said computer network exceeds a preset amount;

a differentiator to evaluate a message content of each of said requests, if said preset amount is exceeded; and

a switch to admit said each request only if said evaluation passes at least one criterion for admission.

27. (Currently amended) The request throttler of claim 26, wherein said differentiator and said switch ~~comprises~~ comprise a set of computer instructions.

28. (Original claim) The request throttler of claim 27, wherein said set of computer instructions comprises a software plugin.

29. (Original claim) The request throttler of claim 26, wherein said differentiator and said switching functions are distributed in said network.

30. (Previously presented) A computer-readable medium containing a set of computer-readable instructions for a method in a computer network of controlling an admittance of requests to at least one processing component, said method comprising:

determining whether an amount of network traffic exceeds a preset amount;

if said preset amount is exceeded, differentiating a type of said requests based on a content in each said request; and

admitting said each request only if said differentiated type meets at least one criterion for admission.

31. (Previously presented) A computer network comprising:

a request throttler for controlling an admittance of requests to at least one processing component and comprising a differentiator to evaluate a message content of each of said requests and a switch to admit said each request only if said evaluation passes at least one criterion for admission, wherein said request throttler is invoked only if an amount of traffic on said computer network exceeds a preset amount.

32. (Previously presented) The method of claim 1, wherein said admittance of said requests is handled by a content handler when said amount of traffic is below said preset threshold, said content handler comprising a Layer 4 Load Balancing (L4LB) component to distribute said requests as based on a Uniform Request Locator (URL) rather than an information content of said requests.

33. (Previously presented) The request throttler of claim 26, further comprising:

a content handler that handles said requests when said amount of traffic is below said preset threshold, said content handler comprising a Layer 4 Load Balancing (L4LB) component to distribute said requests as based on a Uniform Request Locator (URL) rather than an information content of said requests.